

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	CASE NO. 09-36569-H4-7
JACK KLINE CO., INC.	§	
DEBTOR	§	

**Trustee's Motion to Convert Contested Matters
to Adversary Proceedings**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

TO THE HONORABLE JEFF BOHM, U. S. BANKRUPTCY JUDGE:

Rodney Tow, Trustee, files this Trustee's Motion to Convert Contested Matters to Adversary Proceedings and would show the Court as follows:

1. The Trustee seeks to convert the surcharge and claim objections filed against Central Bank and Doc's Trading Post, LLC from a contested matter to a adversary proceedings.

Jurisdiction

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This matter concerns Bankruptcy Rule 3007. Doc's Trading Post and Central Bank have both filed proofs of claim in this bankruptcy estate. Venue is proper because this bankruptcy is filed in this Court. These contested matters relate to core matters.

Facts

3. The Trustee filed a claim objection and surcharge motion against Doc's Trading Post and another against Central Bank. The Trustee filed them as contested matters instead of adversary proceedings.
4. These matters are set for trial on May 26, 2010.
5. The Trustee seeks equitable relief and the recovery of property or money. The Trustee realized while researching his response to the Central Bank Motion for Summary Judgment that these contested matters may need to be adversary proceedings.
6. Today, the Trustee filed second amended claim objections and surcharge motions making it abundantly clear that the Trustee is seeking equitable relief. In an abundance of caution, he believes the contested matters may need to be converted to adversary proceedings.

Relief Sought

7. The Trustee requests that the contested matters filed against Doc's Trading Post and Central Bank be converted to adversary proceedings so the trial may proceed on May 26, 2009 without procedural delays.

Legal Authorities in Support of Relief Sought

8. Bankruptcy Rule 3007 previously stated that when a claim objection is combined with other relief then it was deemed to be an adversary proceeding. That changed, however, in 2007 with the amendment to Rule 3007(b) which states that a demand for relief of a kind specified in Rule 7001 is not allowed in an objection to the allowance of a claim but may be included in an adversary proceeding.

9. Bankruptcy Rule 7001 does not include a surcharge action under Section 506, unless it is removed to the bankruptcy court [see Rule 7001(10)], but it does include a proceeding to recover money or property under Bankruptcy Rule 7001(1). Also, Bankruptcy Rule 7001(7) includes “other equitable relief.”
10. This Court held in *Wilborn*, “Even if the distinction between an adversary proceeding and a contested matter somehow affected this Court's subject matter jurisdiction, this Court has the power to convert a contested matter to an adversary proceeding on its own motion.”¹
11. Since the Trustee is seeking equitable relief and the return of money or property to the estate, he believes this Court should convert these contested matters to adversary proceedings and try the adversary proceedings simultaneously.

Based on the foregoing, the Trustee requests the Court to convert the contested matter against Doc’s Trading Post, LLC and the contested matter against Central Bank, to adversary proceedings and try them simultaneously on May 26, 2010.

Respectfully submitted this April 21, 2010.

TOW & KOENIG, PLLC

By: /s/Rodney Tow
Rodney Tow
SBA# 20152500

¹*In re Wilborn* 401 B.R. 872, 892 -893 (Bkrtcy.S.D.Tex.,2009), citing *Costa v. Marotta, Gund, Budd & Dzera, LLC*, 281 Fed.Appx. 5, 6 (1st Cir.2008) (affirming both the bankruptcy court and the district court after “the bankruptcy court sua sponte converted the contested matter into an adversary proceeding”); *Johnson v. Stemple (In re Stemple)*, 361 B.R. 778, 784 (Bankr.E.D.Va.2007) (converting, sua sponte, a party's motion to dismiss to a complaint and initiating an adversary proceeding as required by Fed. R. Bankr.P. 7001(5)).

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served upon all of the parties on the attached service list ECF Notification or first class U.S. mail, proper postage affixed, on this the April 22, 2010.

/s/Rodney Tow

Rodney Tow

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